DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning

Certain Intermodal Containers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of a twenty foot long intermodal container. Based upon the facts presented, CBP has concluded that the country of origin of the intermodal container is the Republic of Korea for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 13, 2016. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within [insert 30 days from date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Teresa M. Frazier, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325-0139.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain intermodal containers, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H273529, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as

amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that the processing in Korea results in a substantial transformation. Therefore, the country of origin of the intermodal container is Korea for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 13, 2016

Myles B. Harmon
Acting Executive Director
Regulations and Rulings
Office of Trade

H273529

May 13, 2016

OT:RR:CTF:VS H273529 TMF

CATEGORY: Country of Origin

Michael G. McManus
Duane Morris LLP
505 9th Street, N. W., Suite 1000
Washington, DC 20004-2166

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Substantial Transformation; Twenty Foot Intermodal Shipping Containers

Dear Mr. McManus:

This is in response to your correspondence of February 12, 2016, requesting a final determination on behalf of your client, Sea Box, Inc. ("Sea Box"), pursuant to subpart B of part 177, U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. § 177.21 *et seq.*). Under pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is, or would be, a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns a twenty foot long Sea Box shipping container that is claimed to be a product of the Republic of South Korea or the United States. We note that Sea Box, Inc. is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this determination.

FACTS:

Your client requests a country of origin determination concerning a twenty foot long intermodal container. You state that the twenty foot shipping container is a 20 foot, International Organization for Standardization (ISO) compliant container possessing the following external measurements: 19' 10.5" in length with a tolerance of +0, -1/4 of an inch; 8.0' in width with a tolerance of +0, -3/16 of an inch; 8.0' in height with a tolerance of +0, -3/16 of an inch. The internal dimensions are: 19'4 11/64" (L); 7'8 17/32" (W); 7'4 3/16"(H). The 20 foot container is comprised of corrugated steel sides and roofing which give it a favorable strength to weight ratio; two sets of forklift "pockets" that permit forklifts to lift and move laden or unladen containers; wooden flooring tested to withstand 16,000 lbs. per square foot (144 square inches); 24 top and

bottom wall tie down steel lashing rings each having a capacity of 4,000 lbs.; and two vents. The twenty foot containers weigh 5,000 lbs. each and can accommodate a payload of 47,910 lbs.

You state that your client intends to assemble the containers from parts originating in South Korea, the People's Republic of China (PRC) and the United States. You state three of the four principal components (the right and left sidewalls and the roof) of the twenty foot container will be made in Korea. You state that the container floor is made in China as well as the two container ends, which includes the doors. The U.S. components are prime and finish coatings, decals, tie backs/welding wire, aluminum shot blast media and sealant.

Manufacturing Process

You describe Sea Box's manufacturing of the container to be a complex industrial process which takes more than day to complete. You list fourteen manufacturing steps that require the manipulation of large components to form a structurally sound container to its precise size in accordance with ISO specifications.

You state that the container must be capable of being stacked up to nine units high, with the base of a stack strong enough to support 423,280 static lbs. above it (8 containers x 58,800 lbs. per container). In addition, the container must be able to support a dynamic load taking into account a vessel's motion in conformity with the American Bureau of Shipping (ABS). You also advise that the containers must be International Container Safety Convention (CSC) certified and manufactured according to ISO standards.

You state in order to be CSC certified in the United States, the manufacturer's facility must be pre-approved for manufacturing CSC-certified containers by a testing and certification organization sanctioned by the U.S. Coast Guard. You also state that the manufacturer must design and build prototype containers of the specific kind and type proposed in the specific facility to be certified and then submit them for testing by the approved organization. You note that only after successful completion of these prerequisites will a company be authorized to manufacture and furnish containers to be included in the internationally accepted ISO system of transportation.

ISSUE:

Whether the twenty foot intermodal container is considered to be a product of the United States or Korea for U.S. Government procurement purposes.

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 *et seq*., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq*.), CBP issues country-of-origin advisory rulings and final determinations as to whether an article is a product of a designated country for the purpose of granting waivers of certain "Buy American" restrictions on U.S. Government procurement.

In rendering final determinations for purposes of U.S. Government procurement, CBP applies the provisions of Subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the Trade Agreements Act. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as "an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with name, character, or use distinct from that of the article or articles from which it was transformed." *See* 48 C.F.R § 25.003.

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 C.F.R. § 177.22(a).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. Substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. *See United States v. Gibson-Thomsen Co*., 27 C.C.P.A. 267 (1940). In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *See Belcrest Linens v. United States,* 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Uniroyal, Inc. v. United States*, the Court of International Trade held that no substantial transformation occurred because the attachment of a footwear upper from Indonesia to its outsole in the United States was a minor manufacturing or combining process which left the identity of the upper intact. *Uniroyal, Inc. v. United States*, 3 CIT 220, 224, 542 F. Supp. 1026, 1029 (1982), aff'd, 702 F.2d 1022 (Fed. Cir. 1983). The court found that the upper was readily recognizable as a distinct item apart from the outsole to which it was attached, it did not lose its identity in the manufacture of the finished shoe in the United States, and the upper did not undergo a physical change or a change in use. Also, under *Uniroyal*, the change in name from "upper" to "shoe" was not significant. The

court concluded that the upper was the essence of the completed shoe, and was not substantially transformed.

In *National Hand Tool Corp. v. United States*, 16 CIT 308 (1992), aff'd, 989 F.2d 1201 (Fed. Cir. 1993), the court considered sockets and flex handles which were either cold formed or hot forged into their final shape prior to importation, speeder handles which were reshaped by a power press after importation, and the grip of flex handles which were knurled in the United States. The imported articles were heat treated, cleaned by sandblasting, tumbling, and/or chemical vibration before being electroplated. In certain instances, various components were assembled together which the court stated required some skill and dexterity. The court determined that the imported articles were not substantially transformed and that they remained products of Taiwan. In making its determination, the court focused on the fact that the components had been cold formed or hot forged "into their final shape before importation", and that "the form of the components remained the same" after the assembly and heat treatment processes performed in the United States.

It is your position that the country of origin of the intermodal containers is South Korea because three of the container's components (the roof and two side panels), like *National Hand Tool and Uniroyal*, impart the container's essential character because they are already formed in the final shape prior to importation into the United States. You also state that the three Korean components—the roof and side panels predominate in value since they cost more than the Chinese components (front end, door end and floor). In sum, you argue that the country of origin is South Korea, or in the alternative, the United States.

In HQ 555111, dated March 14, 1989, CBP determined that shearing steel sheets to size, along with bending, notching or drilling of the sheared pieces constituted a substantial transformation, such that the container parts were different in character and use from the originally imported steel sheets. It was also determined that the container parts were distinct articles of commerce that were bought and sold in the trade. CBP also found a second substantial transformation occurred when the container parts were assembled into finished steel storage containers. It was also determined that the container parts were distinct articles of commerce that were bought and sold in the trade. CBP found that the assembly was complex, involving a large number of components and a significant number of different operations, requiring a relatively significant period of time as well as skill, attention to detail and quality control.

In HQ 557607, dated December 18, 1993, CBP determined that steel plates imported into Mexico and used in the production of certain railway freight cars (referred therein as "railcar tanks") underwent a double substantial transformation. The steel plates were sandblasted to remove any foreign debris and particles; cut to same length and width in varying sizes; rolled and cold-formed into cylindrical or near-cylindrical shape; tack-welded to hold their shape with seams, then permanently welded using a design-specific welding fixture. Thereafter, the rings were permanently welded in place; and holes were cut into the tank shell in accordance with design specifications for the placement of miscellaneous parts that were also permanently welded. The seams were then subject to x-ray analysis to ensure against any defects, followed by painting with rust-resistant paint primer. CBP determined that the welding and complex assembling of the steel container parts resulted in a new, finished and different article of commerce possessing a distinct name, character and use.

We find that the essential character of the container is imparted by the Korean-origin roof, and two side panels, which, as in *National Hand Tool*, are already formed in their final shapes prior to importation. Further, the twenty foot containers are similar to the final goods discussed in HQ 555111 and HQ 567607. While these two decisions pertained to the Generalized System of Preferences (GSP), and the GSP often considers whether the second substantial transformation is not just a "pass-through" operation, we note that in those two decisions it was important that the components were formed and created in the final country of assembly. Similarly, in this case we find that the Sea Box container will mostly be comprised of components from Korea, especially when comparing these components to the container's finished surface area, such that the origin of the finished container may be considered Korea. As noted in our ruling to you, HQ H267876, dated December 23, 2015, the operations in the United States are not sufficient to result in a substantial transformation; therefore, we find that the country of origin of the finished twenty foot intermodal containers will be Korea for government procurement purposes.

HOLDING:

Based upon the specific facts of this case, we find that the country of origin of the intermodal containers for purposes of U.S. Government procurement is Korea.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at–interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Myles B. Harmon
Acting Executive Director
Regulations and Rulings
Office of Trade

[FR Doc. 2016-11947 Filed: 5/19/2016 8:45 am; Publication Date: 5/20/2016]